
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Counties, Cities, and Towns

FROM: Wesley R. Bennett, Commissioner

RE: New Legislation on Residential TIF Districts, Senate Enrolled Act 566-2019

DATE: June 17, 2019

On May 5, 2019, Governor Holcomb signed into law Senate Enrolled Act 566-2019 (“SEA 566”). Effective July 1, 2019, SEA 566 allows a redevelopment commission (“RDC”) to create a tax increment finance district for residential property (“residential TIF”). This memorandum discusses this new legislation. This memorandum is for informative purposes and is not a substitute for reading the law.

I. Residential Housing and Other Terms, IC 36-7-14-0.5

Section 1 of SEA 566 includes the following additional terms specific to the new residential TIF laws.

- “Residential housing” is defined as housing or workforce housing that consists of single family dwelling units sufficient to secure quality housing in reasonable proximity to employment.
- “Workforce housing” is defined as housing that is affordable for households with earned income that is sufficient to secure quality housing in reasonable proximity to employment.
- “Residential housing development program” is a program set up by a redevelopment commission for the construction of new residential housing or renovation of existing residential housing.

II. Creating a Residential TIF, IC 36-7-14-53

Sections 2 of SEA 566 adds to the Indiana Code IC 36-7-14-53. This section explains how an RDC may establish a residential TIF.

An RDC may adopt a resolution designating a residential housing development program if the following qualifications are met:

- (1) For a county RDC, the average of new, single family residential houses constructed in the unincorporated area of the county during the last three (3) years is less than one percent (1%) of the total number of single family residential houses within that area on January 1 of the year in which the resolution is adopted.
- (2) For a municipal RDC, the average of new, single family residential houses constructed in the municipality during the last three (3) years is less than one percent (1%) of the total

number of single family residential houses within that area on January 1 of the year in which the resolution is adopted.

The Department of Local Government Finance (“Department”), in cooperation with either the appropriate county or municipal agency, must determine whether a county or municipality meets these qualifications. A county or municipality may request from the Department a report, if a report exists, describing the effect of current assessed value allocated to tax increment financing allocation areas on the amount of the tax levy or proceeds and the property tax caps for the taxing units within the boundaries of the residential housing development program.

The residential housing development program may include any relevant elements the RDC considers appropriate and may be adopted as part of a redevelopment plan or amendment to a plan. However, the residential housing development program must be approved by the municipal legislative body or county executive (as applicable) after which the RDC must then establish a residential TIF (described in V, below).

Before adopting a resolution, the RDC must hold a public hearing and provide notice as pursuant to IC 36-7-14-17 and 17.5. Judicial notice of the resolution may be made under IC 36-7-14-18.

Before formal submission of any residential housing development program to the RDC, the department of redevelopment must do the following:

- (1) Consult with persons interested in or affected by the proposed program.
- (2) Provide the affected neighborhood associations, residents, and township assessors with an adequate opportunity to participate in an advisory role in planning, implementing, and evaluating the proposed program.
- (3) Hold public meetings in the affected neighborhood to obtain the views of neighborhood associations and residents.

A residential housing development program must expire no later than twenty (20) years after the date the program is established. In addition, the program cannot take effect until the school board of each school corporation affected by the program passes a resolution approving the program.

III. Powers of an RDC Respecting a Residential TIF, IC 36-7-14-54

Section 3 of SEA 566 adds IC 36-7-14-54, which only applies to a program for residential TIFs set up under IC 36-7-14-53.

Except as described below, all the rights, powers, privileges, and immunities that may be exercised by the RDC in blighted, deteriorated, or deteriorating areas may be exercised by the RDC in implementing a residential housing development program, including the following:

- (1) The special tax levied in accordance with IC 36-7-14-27 may be used to accomplish the purposes of the residential housing development program.
- (2) Bonds may be issued under this chapter to accomplish the residential housing development program, but only one (1) issue of bonds may be issued and payable from increments in any allocation area except for refunding bonds or bonds issued in an

amount necessary to complete a residential housing development program for which bonds were previously issued.

- (3) Leases may be entered into under this chapter to accomplish the residential housing development program.
- (4) The tax exemptions set forth in IC 36-7-14-37 are applicable.
- (5) Property taxes may be allocated under IC 36-7-14-39.

An RDC cannot exercise eminent domain, or enter into a lease or bond issue without approval from the applicable legislative body, pursuant to implementing this program.

Residential housing in this program may not be encumbered, used as collateral, subjected to a monetary assessment, or otherwise restricted in any way in order to provide security for repayment of a bond issued or lease entered into for or in connection with the program, including any

- (1) lien;
- (2) mortgage;
- (3) covenant;
- (4) special assessment; or
- (5) restriction on a homeowner's right to appeal a property tax assessment or other property tax issue affecting a homeowner's liability for property taxes.

IV. Findings of an RDC on Residential TIF, IC 36-7-14-55

With respect to a residential housing development program, the RDC must make the following findings in the resolution:

- (1) The public health and welfare will be benefitted by accomplishment of the program.
- (2) The accomplishment of the program will be of public utility and benefit as measured by
 - (A) the provision of adequate residential housing;
 - (B) an increase in the property tax base; or
 - (C) other similar public benefits.

V. Allocation of Residential TIF, IC 36-7-14-56

Finally, section 5 of SEA 566 adds IC 36-7-14-56, explaining the allocation of tax increment for a residential TIF.

Base Assessed Value

“Base assessed value” means the net assessed value of all property (except personal property) determined for the assessment date immediately preceding the effective date of the allocation provision and after TIF neutralization under IC 36-7-14-39(h). This definition is particular to residential TIFs and does not incorporate any aspect of the definition of base assessed value in IC 36-7-14-39(a).

Allocation Funds

Like with TIFs in general, the RDC must establish an allocation fund (see IC 36-7-14-39(b)(3)). An allocation fund for a residential TIF may be used only for purposes related to the accomplishment of the purposes of the residential housing development program, including, but not limited to, the following:

- (1) The construction of any infrastructure (including streets, roads, and sidewalks) or local public improvements in, serving, or benefiting a residential housing development project.
- (2) The acquisition of real property and interests in real property for rehabilitation purposes within the residential TIF district.
- (3) The preparation of real property in anticipation of development of the real property within the residential TIF district.
- (4) To do any of the following:
 - (A) Pay the principal of and interest on bonds or any other obligations payable from allocated tax proceeds in the residential TIF district that are incurred by the redevelopment district for the purpose of financing or refinancing the residential housing development program for the residential TIF district.
 - (B) Establish, augment, or restore the debt service reserve for bonds payable solely or in part from allocated tax proceeds in the residential TIF district.
 - (C) Pay the principal of and interest on bonds payable from allocated tax proceeds in the allocation area and from the special tax levied IC 36-7-14-27.
 - (D) Pay the principal of and interest on bonds issued by the unit to pay for local public improvements that are physically located in or physically connected to the residential TIF district.
 - (E) Pay premiums on the redemption before maturity of bonds payable solely or in part from allocated tax proceeds in the residential TIF district.
 - (F) Make payments on leases payable from allocated tax proceeds in the residential TIF district under IC 36-7-14-25.2.
 - (G) Reimburse the unit for expenditures made by the unit for local public improvements (which include buildings, parking facilities, and other items described in IC 36-7-14-25.1(a)) that are physically located in or physically connected to the residential TIF district.

Excess AV

The RDC must determine the amount of excess assessed value that will exceed the amount of assessed value needed to produce the property taxes necessary to:

- make the distribution required under IC 36-7-14-39(b)(2) of this chapter;
- make, when due, principal and interest payments on bonds described in IC 36-7-14-39(b)(3);
- pay the amount necessary for other purposes described in IC 36-7-14-39(b)(3); and
- reimburse the county or municipality for anticipated expenditures described in IC 36-7-14-56(c)(2).

The excess AV is determined with the following equation:

$$(A - B * R) = P$$

$$(P - N) * R * 100 = \text{Excess AV}$$

A = AV of taxable property in the residential TIF district as of the most recent assessment date.

B = Base assessed value, i.e., the assessed value of non-personal property of the assessment date before the creation of the residential TIF.

R = Estimated tax rate of the residential TIF.

P = Proceeds.

N = Proceeds necessary to make IC 36-7-14-39(b) payments.

The Department notes that the equation described in SEA 566 does not account for the tax rate being applied per \$100 of assessed value. However, the Department believes it is implied that this be the case because that is how property tax rates are applied.

By way of example,

A = \$300,000,000

B = \$100,000,000

R = \$1.00 per \$100 AV or \$0.01

N = \$1,000,000

$$(\$300,000,000 - \$100,000,000) * \$0.01 = \$2,000,000$$

$$\$2,000,000 - \$1,000,000 = \$1,000,000$$

$$\$1,000,000 * 100 = \$100,000,000$$

Therefore, the excess AV is \$100,000,000.

The RDC must also provide a written notice on whether there is any excess AV that may be paid to the taxing units within the residential TIF district. Notice must be given to the following:

- The county auditor.
- The fiscal body of the county or municipality that established the department of redevelopment.
- The officers who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 for each of the other taxing units that are wholly or partly located within the allocation area.
- The Department in an electronic format.

If the amount of excess AV is determined to generate more than 200% of the amount of tax proceeds necessary for purposes described in IC 36-7-14-39(b)(3), the RDC must submit to the appropriate legislative body its determination of excess AV that should be allocated to the respective taxing units in the manner described in IC 36-7-14-56(d)(2). The legislative body may approve the RDC's determination or modify the amount of excess AV to be allocated. The county auditor must allocate to the respective taxing units the excess assessed value determined by the RDC.

Contact Information

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